

@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2217 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTBHAI MAGANBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner
MR HH PATEL LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City passed an order on 21-3-1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act (for short PASA Act) detaining the petitioner under

the provisions of the said Act.

2. In the grounds of detention the detaining authority took into consideration the two offences registered against the petitioner under the Bombay Prohibition Act. The authority also took into consideration the statements of two anonymous witnesses and was satisfied that the petitioner is a bootlegger as defined under the PASA Act. The authority has recorded subjective satisfaction about the truth and genuineness of the statements made by the anonymous witnesses, and the fear expressed by the said witnesses qua the petitioner in respect of their person and property and exercised powers under Section 9(2) of the PASA Act by claiming privilege.

3. After considering the less drastic alternative remedy the authority recorded the satisfaction that in order to immediately prevent the petitioner from pursuing his illegal activities powers under PASA Act are required to be resorted to and the petitioner is required to be detained thereunder.

4. The petitioner detenu has approached this court with this petition under Article 226 of the Constitution of India. Amongst many other grounds the main grounds that are pleaded in the petition and are relied upon by Ms. Datta learned advocate for the petitioner can be stated as under:

It is contended that there is non application of mind on the part of the detaining authority while exercising powers under Section 9(2) of the PASA Act. It is contended that the statements of two anonymous witnesses were recorded on 9th and 10th March 1999 respectively. The statements were verified by the detaining authority on 21-3-1999 and the order was passed on that very day. As such there is no time lag which would have made it possible for the detaining authority to apply its mind on the question of the correctness and genuineness of the statements of the anonymous witnesses while exercising powers under Section 9(2) of the PASA Act. This has resulted into denial of right of making an effective representation guaranteed under the Constitution of India. Reliance is placed on the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659.

The second ground that is contended is that the relevant documents like report from the Chemical Analyser of Forensic Science Laboratory in respect of two cases registered against the petitioner. These are relevant

documents and therefore ought to have been supplied. In absence of supply of such documents the detenu's right of making an effective representation is infringed and therefore the petition may be allowed.

5. On the other hand no affidavit is filed by any of the respondents. Mr. H.H. Patel learned AGP appearing for the respondents submitted that so far as the first contention is concerned, factually it is true that verification and the order of detention bear the same date. As regards the second contention it is submitted that the Forensic Science Laboratory report is not available with the detaining authority as the Forensic Science Laboratory has not completed the process of examination of the samples. He further stated that it is not necessary to supply all the documents that are demanded by the petitioner, and placed reliance on decision of this Court in the case of Osman Ali Khataki v. Commissioner of Police, Rajkot 1994(1) GLH 512. It is submitted that the petition may therefore be dismissed.

6. Coming to the rival contentions the first ground that is raised is regarding the date of verification and order being the same.

7. In this regard what transpires is that the statements were verified by the detaining authority on 21-3-1999 and the order was passed on that very day. While doing so the authority recorded subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act.

When an authority exercises powers under Section 9(2) of the PASA Act it has to undertake an exercise of satisfying itself about the correctness and genuineness of the fear expressed by the witnesses. For this purpose it is required to be assessed from the material before it and the statements of the witnesses in this regard. The authority has to consider that exercise of this power would have direct bearing on the right of the detenu of making an effective representation. The authority has therefore to strike a balance between the right of the detenu of making a representation on one hand and the public interest on the other. This responsible task is to be performed by the authority after a careful consideration of the material. This would definitely require time. The affidavit-in-reply is not filed. The authority has not clarified as to when the proposal was received, at what point of time the statements were verified, what material was considered for exercise of

powers under Section 9(2) of the PASA Act, when the orders were prepared and passed. All this exercise was done in one day and in absence of any material coming forward from the detaining authority in form of affidavit in reply, this court is at loss to appreciate as to how the responsible task as stated above was carried out by the detaining authority. In this regard a decision in the case of K.C. Kuhar v. State of Gujarat as reported in 1993(2) GLR 1659 may be profitably employed in service. In view of the above decision and facts of the present case, the petition deserves to be allowed on this ground alone.

8. Another ground that is raised is regarding non supply of documents. It is a settled proposition of law that relevant documents are required to be supplied to the detenu to enable him to exercise his right of making an effective representation. The detenu has demanded the report of Chemical Analyser in respect of the two offences which are relied upon by the detaining authority in the grounds of detention, meaning thereby that these are the offences which are relied upon and assume relevance to the detention and the detenu may make a representation against it. Learned A.G.P. has relied on the decision in the case of Osman Ali Khataki (*supra*). It has been held therein that failure to supply documents and materials which are only casual or passingly referred to or not at all referred to in the course of narration of facts in the grounds of detention and which are not relied upon by the detaining authority in making the order of detention would not render the detention order illegal. But in the instant case as can be seen from the grounds of detention two offences which are registered against the petitioner are relied upon by the detaining authority and therefore they assumed relevance. Since the petition deserves to be allowed on the first ground alone, this court expresses no opinion on the question as to whether non-supply of relevant document because of non availability thereof at the time of detention or soon thereafter when the demand is made, would render the detention illegal!

9. In view of the above facts, the petition deserves to be allowed and the same is allowed. Order passed by Commissioner of Police, Surat City, Surat on 21-3-1999 detaining the petitioner under the provisions of PASA Act is hereby quashed and set aside. The petitioner/detenu Amrutbhai Maganbhai Patel of Jayavgam, Mandir Falia, Tal Choryashi, District Surat be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)